In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 971 of 2007

Date of decision : November 12, 2007.

T. Amudha Sidhanathan and another

... Petitioners

Versus

Union Territory, Chandigarh.

... Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal.

Present: Mr. Vinod S. Bhardwaj, Advocate
for the petitioners.

Mr. S.S. Duhan, Advocate
for U.T. Chandigarh.

A.N. Jindal, J. (Oral)

This order of mine shall dispose of the revision petition against the order dated 30.4.2007 passed by the learned Additional Sessions Judge, Chandigarh ordering to frame charge against the petitioners under Section 9 (b) & 9 (c) of the Explosive Substances Act.

The facts in the background of the case are that the occurrence in this case took place on 23.10.1995 when the crackers were burst and damaged the eyes of one Gaganjit Singh Bal. A complaint in this regard was filed by his uncle on 29.5.1999 on the basis of which FIR No.299 was registered on 28.11.1999. The report was submitted on 31.7.2000 by the Director Central Forensic Science Laboratory, Chandigarh, on the basis of which untraced report was submitted on 11.11.2000. Pursuant to the filing of the untraced report, Station House Officer, Police Station South, submitted an application for destroying the case property on 27.4.2001, upon which under the orders of Judicial Magistrate Ist Class, Chandigarh, the said case property was destroyed on 9.5.2001. However, on 18.5.2002,

Mr. G.S. Bal, complainant moved an application under Section 482 of Cr.P.C. before the Judicial Magistrate Ist Class, Chandigarh for getting the crackers in question to be tested again from any other laboratory other than from Central Forensic Science Laboratory, Chandigarh, over which the Judicial Magistrate Ist Class, Chandigarh vide order dated 10.7.2002 called for the crackers but it was reported that the crackers have already been destroyed. However, he allowed the application vide order dated 21.3.2003. Since the crackers had already been destroyed, the complainant on 9.10.2004 undertook to produce the crackers manufactured prior to the year 1995. After obtaining the report over the said crackers by the complainant, again a cancellation report was submitted on 7.9.2005.

In the meantime, the case was transferred to the Crime Branch for investigation on 23.2.2006 the Crime Branch recommended to present the challan and accordingly challan was presented in the court on 10.11.2006.

Arguments heard.

The prime question raised before me is that the cognizance of the case being taken beyond the period of limitation as prescribed under Section 468 Cr.P.C. the court could not take cognizance of the case. In this regard it would be appropriate to reproduce the provisions of Section 9-B and 9-C of Explosive Substances Act and Section 286 IPC:-

*"**9-B. Punishment of certain offences -***

(1) Whoever, in contravention of rules made under Section 5 or of the conditions of a licence granted under the said rules -

(a) manufactures, imports or exports any explosive shall be

punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both;

(b) possess, uses, sells or transports any explosive shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to three thousand rupees or with both; and

(c) in any other case, with fine which may extend to one thousand rupees.

(2) Whoever in contravention of a notification under Section 6, manufactures, possesses or imports any explosive shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both; and in the case of importation by water, the owner and master of the vessel or in the case of importation by air, the owner and the master of aircraft, in which the explosive is imported shall, in the absence of reasonable excuse, each be punishable with fine which may extend to five thousand rupees.

(3) Whoever -

(a) manufactures, sells, transports, imports, exports, or possesses any explosive in contravention of the provisions of clause (a) of Section 6A; or

(b) sells, delivers or dispatches any explosive in contravention of the provisions of Clause (b) of

that section.

Shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; or

(c) in contravention of the provisions of Section 8 fails to give notice of any accident shall be punishable

(i) with fine which may extend to five hundred rupees or;

(ii) if the accident is attended by loss of human life, with imprisonment for a term which may extend to three months or fine or with both.

9-C Offences by companies - *(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;*

Provided that nothing contained in this sub section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or in attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purpose of this section -

(a) "company" means anybody corporate, and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

286 IPC. Negligent conduct with respect to explosive substance. *Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,*

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both."

On perusal of the aforesaid sections, the maximum sentence provided under the Act is three years and fine. Now it would be appropriate to reproduce Section 468 of the Code which reads as under :-

> *"**468. Bar to taking cognizance after lapse of the period of limitation** - (1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be -*
>
> *(a) six months, if the offence is punishable with fine only;*
>
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
>
> *(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*
>
> *[(3) For the purpose of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the cas may be, the most severe punishment.]"*

As per sub-section 2 (c) of Section 468 Cr.P.C. the period of limitation for launching the prosecution is three years, where the offence is punishable with imprisonment for one year but not exceeding three years. Here in this case, the occurrence took place as far back as in the year 1995

and the challan was presented in the year 2006. Therefore, apparently the prosecution has been launched against the petitioners beyond the period of limitation as prescribed under the statute. Even otherwise, nothing could be pointed out by the learned counsel for U.T. Chandigarh as to which are the basis for accusing the petitioners for the offence under Sections 9-B and 9-C of the Explosive Substances Act and Section 286 of IPC.

Consequently, I accept the petition, set aside the impugned order dated 30.4.2007 and quash the proceedings pending before the Chief Judicial Magistrate, Chandigarh.

November 12, 2007 **(A.N. Jindal)**
deepak **Judge**

To be referred to reporter : Yes/No.